View metadata, citation and similar papers at core.ac.uk

brought to you by CORE

provided by University of Kentucky

University of Kentucky
UKnowledge

1970-1979 Briefs

8-23-1976

Gary John Kwosek v. Commonwealth of Kentucky

Reply Brief 1976-SC-0389

Right click to open a feedback form in a new tab to let us know how this document benefits you.

Follow this and additional works at: https://uknowledge.uky.edu/ky_appeals_briefs70s

Repository Citation

1976-SC-0389, Reply Brief, "Gary John Kwosek v. Commonwealth of Kentucky" (1976). *1970-1979*. 870.
https://uknowledge.uky.edu/ky_appeals_briefs70s/870

This Brief is brought to you for free and open access by the Briefs at UKnowledge. It has been accepted for inclusion in 1970-1979 by an authorized administrator of UKnowledge. For more information, please contact UKnowledge@lsv.uky.edu.

KYSC1976-SC-0389-03
{D217BE2F-3AAB-4B03-B309-EC5B824D926D}
{135148}{54-130809:132447}{082376}

REPLY BRIEF

547 SW 2d 451

SUPREME COURT OF KENTUCKY

FILE NO. 76-389

GARY JOHN KWOSEK — APPELLANT

VS. APPEAL FROM HENDERSON CIRCUIT COURT
HON. CARL D. MELTON, JUDGE

COMMONWEALTH OF KENTUCKY — APPELLEE

REPLY BRIEF FOR APPELLANT

JACK EMORY FARLEY
PUBLIC DEFENDER
COMMONWEALTH OF KENTUCKY
625 LEAWOOD DRIVE
FRANKFORT, KENTUCKY 40601

BY: TIMOTHY T. RIDDELL
ASSISTANT PUBLIC DEFENDER

CERTIFICATE OF SERVICE:

I hereby certify that a copy of the foregoing Reply Brief For Appellant has been mailed, postage prepaid, to Hon. Carl D. Melton, Judge, Henderson Circuit Court, Henderson County Courthouse, Henderson, Kentucky 42420; Hon. Ulvester Walker, Commonwealth Attorney, 51st Judicial District, Henderson, Kentucky 42420; and Hon. Robert F. Stephens, Attorney General, Commonwealth of Kentucky, Capitol Building, Frankfort, Kentucky 40601, this 23d day of August, 1976.

Timothy T. Riddell

FILED

AUG 23 1976

MARTHA LAYNE COLLINS
CLERK
SUPREME COURT

TABLE OF CONTENTS AND AUTHORITIES

SUPREME COURT OF KENTUCKY

FILE NO. 76-389

GARY JOHN KWOSEK — APPELLANT

VS. APPEAL FROM HENDERSON CIRCUIT COURT
HON. CARL D. MELTON, JUDGE

COMMONWEALTH OF KENTUCKY — APPELLEE

* * * * * * * * * *

MAY IT PLEASE THE COURT:

PURPOSE OF THE REPLY BRIEF

To respond to those arguments found in the Brief For Appellee.

QUESTIONS TO WHICH THIS BRIEF ADDRESSED

I.

DID THE TRIAL COURT ERR TO THE APPELLANT'S SUBSTANTIAL PREJUDICE AND DENY THE APPELLANT HIS CONSTITUTIONAL RIGHT TO CONFRONTATION AND DUE PROCESS OF LAW BY FAILING TO MAKE A PROPER DETERMINATION OF HIS COMPETENCY TO STAND TRIAL?

II.

DID THE TRIAL COURT ERR TO THE APPELLANT'S PREJUDICE AND DENY THE APPELLANT HIS CONSTITUTIONAL RIGHT TO PRESENT A DEFENSE BY FAILING TO INSURE THAT THE APPELLANT HAD A MEANINGFUL PSYCHIATRIC EXAMINATION?

ARGUMENTS

I.

THE TRIAL COURT ERRED TO APPELLANT'S SUBSTANTIAL PREJUDICE AND DENIED THE APPELLANT HIS CONSTITUTIONAL RIGHT TO CONFRONTATION AND DUE PROCESS OF LAW BY FAILING TO MAKE A PROPER DETERMINATION OF HIS COMPETENCY TO STAND TRIAL.

Appellee asserts in his brief that a hearing under the authority of RCr 8.06 was not required in the instant case because Appellant had been evaluated by Dr. Haffner and had been declared competent to stand trial (Brief for Appellee, hereinafter B.A., pp. 4-5). Appellee suggests that Dr. Haffner's report was conclusive on the issue of the necessity to conduct a hearing to determine Appellant's competency to stand trial because

> [t]he record does not disclose that there was any other information given to the Court, any bizarre behavior on the part of appellant visible to the Court, or any other demonstration by which the Court could conclude that the appellant was possibly incompetent to stand trial (B.A., pp. 4-5).

Appellant submits that the conclusion suggested by the Appellee is contrary both to the facts contained in the record in the case sub judice and to the applicable case law of this Court construing RCr 8.06.

Dr. Haffner's conclusions were contained in his report, and were submitted to the trial court on October 3, 1975 (Transcript of Record, hereinafter T.R., pp. 16-17). Following that report, on October 15, 1975 Appellant's trial counsel moved for a more complete and detailed psychiatric evaluation (T.R., pp. 20-22). Appellant's trial counsel listed several grounds for this motion including the following facts: (1) Dr. Haffner's evaluation of Appellant had consisted only of a twenty minute interview; (2) Appellant

had informed Dr. Haffner that he intended to commit suicide before trial; (3) On October 8, 1975, Appellant had attempted to commit suicide while incarcerated, and had been hospitalized for those injuries; (4) On October 12, 1975, Appellant again attempted suicide and was treated for those injuries; (5) Dr. David Watkins, the attending physician of Henderson Community Medical Hospital, stated in an affidavit attached to the motion (T.R., p. 25) that Appellant was in need of extensive psychiatric treatment (T.R., pp. 20-22).

Appellant submits that when these facts were placed before the trial judge, it was incumbent upon the court to conduct a hearing to determine Appellant's competency to stand trial. Contrary to the assertions in the Brief for Appellee, the trial court was presented with facts which raised a reasonable doubt as to Appellant's competency to proceed. Under such facts, RCr 8.06 and the more recent decisions of this Court require that a hearing be conducted.

In Via v. Commonwealth, Ky., 522 S.W.2d 848 (1975), this Court held that a psychiatric report is not determinative of this issue and does not negate the necessity of a hearing where there are other grounds to question the defendant's competency:

> If there were facts in existence tending to establish Vesta's mental competency they are not in the record, and even if they were in the record the rule would seem to be, under Pate and Drope, that the fact that they might warrant a finding of mental capcity would not eliminate the necessity of a hearing. Id., at 850 (Emphasis supplied).

Appellee further argues that it is a "novel idea" to suggest that the trial judge is qualified to pass judgment on the sufficiency of the findings of Dr. Haffner (B.A., p. 5). Appellant submits that trial judges must make this

determination under the requirements of RCr 8.06 and Via, Id. The purpose of the hearing envisioned by the rule and the subsequent case law is to provide a forum in which the trial judge may view the conflicting evidence as to the defendant's competency and make a valid determination on that issue. Appellant suggests that counsel for the Appellee has produced a "novel idea", that being that the findings of the court-appointed psychiatrist can be substituted for the proper functions of the trial judge. Appellee seems to suggest that the psychiatric report alone, even in the face of substantial conflicting evidence, will determine whether the defendent is competent to stand trial, while RCr 8.06 places that determination solely with the trial judge after he has conducted the hearing.

Counsel for the Appellee has reviewed the mental evaluation and has found Dr. Haffner's report to be of such authority that it alone performed the judicial function of deciding whether Appellant was competent to stand trial. Appellant respectfully submits that the Honorable Carl Melton was the trial judge, not Dr. Haffner.

Finally, Appellee argues that "[c]ounsel for the appellant has evaluated the mental evaluator and found him wanting" (B.A., p. 5). Initially, Appellant must point out that he could not have possibly found Dr. Haffner wanting since the trial court did not conduct the RCr 8.06 hearing and afford Appellant an opportunity to confront Dr. Haffner and to challenge the validity of his report. This confrontation was desperately needed because the peculiar if not bizarre behavior of Appellant, subsequent to the twenty minute meeting, militated heavily against the Doctor's speedy conclusion.

The need for confronting said conclusion is further established when the circumstances surrounding the report are examined.

At the outset, Dr. Haffner conducted only one interview with Appellant and this interview lasted a mere twenty minutes (T.R., p. 20). It is questionable whether one twenty minute interview would be adequate to determine Appellant's mental competency to stand trial since it has been established that a person sometimes refuses for the first several interviews to reveal his delusioned thinking, or other evidence of mental disease. Menninger, A Manual for Psychiatric Case Study, ch. 1-4 (2d ed. 1962). See also Birdsell v. United States, 346 F.2d 775 (5th Cir. 1965), demonstrating the potential unreliability of even a two-hour examination. However, "[i]t is worthy of note that recent studies have cast significant doubt on the reliability of single-interview psychiatric evaluation." Greer v. Beto, 379 F.2d 923, 926 n. 1 (5th Cir. 1967).

Secondly, there is no indication in the record, including Dr. Haffner's report, that any of the basic psychiatric tools were used by Dr. Haffner to aid him in making the very complicated decision that Appellant was competent to stand trial. It is an undisputed matter that certain "necessary tools" should be used by psychiatrists in determining the mental state of a defendant. These tools include:

> A complete, well-taken history, a physical examination, a neurologic examination, examination of mental, sensorium and intellectual resources; ...a laboratory examination, and...amytal interviews, and a skillfully interpreted Rorschach test. United States ex rel. Smith v. Baldi, 192 F.2d 540, 565 (3d Cir. 1955).

The failure of Dr. Haffner to use even one of these tools can only raise doubts as to the validity of his conclusions. These doubts could have only been resolved by confronting Dr. Haffner and his methods during an RCr 8.06 evidentiary hearing.

In the final assault on this Argument, appellee cites Russell v. Commonwealth, Ky., 482 S.W.2d 584 (1972) and Dye v. Commonwealth, Ky., 477 S.W.2d 805 (1972) for the proposition that whether an RCr 8.06 hearing shall be held rests in the discretion of the trial judge (B.A., pp. 4-5). Speaking of the Dye, Id., decision, this Court in Via, supra, said:

> It is true that in Mullins v. Commonwealth, Ky., 454 S.W.2d 689, Matthews v. Commonwealth, Ky., 468 S.W.2d 313, and Dye v. Commonwealth, Ky., 477 S.W.2d 805, this court found no error in the denial of a hearing with respect to the defendant's mental capacity to stand trial, but in those cases there either was no evidence in the record of lack of the required capacity, or the evidence of the existence of the capacity was so strong as not to leave a reasonable doubt of the capacity. Id., at 850.

Appellant submits that the instant case presents a factual situation comparable to that found in Via, Id. Here the only evidence of record of the existence of the requisite mental capacity is found in Dr. Haffner's report (T.R., pp. 16-17). On the other hand, the evidence of record of the lack of the required capacity is substantial and highly indicative of Appellant's incompetency (T.R., pp. 20-22). Under these facts, the trial courts failure to conduct a hearing constituted prejudicial error and denied Appellant due process of law. Via v. Commonwealth, supra; Pate v. Robinson, 383 U.S. 375, 86 S.Ct. 836, 15 L.Ed.2d 815 (1966); Drope v. Missouri, 420 U.S. 162, 95 S.Ct. 896, 43 L.Ed.2d 103 (1975). Appellant's

conviction should be reversed, and he should be granted a new trial.

II.

THE TRIAL COURT ERRED TO THE APPELLANT'S SUBSTANTIAL PREJUDICE AND DENIED THE APPELLANT HIS CONSTITUTIONAL RIGHT TO PRESENT A DEFENSE BY FAILING TO INSURE THAT THE APPELLANT HAD A MEANINGFUL PSYCHIATRIC EXAMINATION.

In his brief, the Appellee agrees that the defense of insanity was not developed in the Appellant's trial, but argues that "this was not the fault of the trial court nor of the Commonwealth Attorney." (B.A., p. 7). Appellee supports this assertion first by arguing that the appointment of Dr. Haffner to examine Appellant was sufficient compliance with KRS 504.050(2), and secondly by arguing that Appellant's dissatisfaction with that evaluation was "expressed too late," as the alleged error was raised only in the Motion for a New Trial (B.A., pp. 7-8).

Appellant submits that both of these contentions are refuted by a close reading of the record in the case at bar.

Appellant first moved for a psychiatric evaluation to determine Appellant's competency to stand trial; this motion was made on August 22, 1975 (T.R., p. 11). The motion was granted on September 5, 1975 (T.R., p. 14). The examination was conducted on October 1, 1975 (T.R., p. 16), and submitted to the trial court on October 3, 1975 (T.R., p. 17). Following the submission of this report, which only evaluated Appellant's mental competency to stand trial, Appellant, on October 8, 1975, filed notice that Appellant would rely upon the defense of insanity (T.R., p. 18). At this point, the

trial court ordered Dr. Haffner to conduct another evaluation of Appellant to determine Appellant's mental capacity at the time of the offense (T.R., p. 19).

On October 15, 1975, Appellant filed a motion objecting to the appointment of Dr. Haffner as the psychiatrist that would evaluate Appellant (T.R., pp. 20-22). This motion set out eight separate grounds in support, and specifically requested that Appellant "be transferred from the Henderson County Detention Center, Henderson, Kentucky to an appropriate hospital or mental institution. . .instead of the mental examination scheduled by Dr. Joel Haffner. . . .(T.R., p. 20) (Emphasis supplied). Two days later, on October 17, 1975, the trial court granted the motion: ". . .[I]t is ORDERED that defendant's aforesaid motion be and the same is hereby sustained. . . ." (T.R., p. 26). Accordingly, the trial court postponed the trial date (T.R., p. 26).

Although the trial court granted Appellant's motion for a psychiatric evaluation other than the one scheduled by Dr. Haffner, the record discloses that Dr. Haffner nevertheless conducted the evaluation on November 11, 1975, and submitted his report to the court on November 12, 1975 (T.R., pp. 27-28). No other mental examination of Appellant was ever conducted, in violation of the trial court's specific order granting Appellant's motion. Appellant asserted this as one of the grounds in support of his Motion for a New Trial (T.R., p. 42).

A close reading of the record thus refutes both contentions asserted by the Appellee in his brief. Appellant was denied the right to present the defense of insanity by the trial court's failure to effectuate its own order granting a psychiatric examination of Appellant other than the one

scheduled by Dr. Haffner. Further, and contrary to the assertion in Appellee's brief, Appellant's motion requesting the above-mentioned order timely expressed his dissatisfaction with both the prior mental examination and the proposed mental examination by Dr.Haffner. Accordingly, Appellant was denied his constitutional right to present his defense, and his conviction should be reversed.

CONCLUSION

For the reasons delineated above, together with the reasons found in the original Appellant's brief, Appellant respectfully requests this Court to reverse his conviction and to remand this case for a new trial.

Respectfully submitted,

JACK EMORY FARLEY
PUBLIC DEFENDER
COMMONWEALTH OF KENTUCKY
625 LEAWOOD DRIVE
FRANKFORT, KENTUCKY 40601

TIMOTHY T. RIDDELL
ASSISTANT PUBLIC DEFENDER